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To: Microsoft ATR
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Subject: Microsoft Settlement

The Proposed Settlement Fails to Remedy Antitrust Violations and Fails to Protect the National Interest
The Proposed Settlement Should Be Rejected

1. Microsoft has maintained its operating system monopoly through illegal means. The proposed Settlement suffers from two critical flaws: it allows Microsoft to maintain all the benefits of its illegal activities, and it will be ineffective in preventing Microsoft from continuing its actions to maintain its monopoly position.
2. The activities likely to maintain Microsoft's operating system monopoly in the next few years are not the same activities that illegally maintained it during the past. The proposed Settlement may perhaps prohibit continuation of some of the activities that benefited Microsoft in the 1990's, but it will do little if anything to prohibit the activities useful in illegally maintaining the operating system monopoly today.
3. The Microsoft operating system monopoly is bad for our national interest. The Microsoft system is notoriously poor at protecting data, and is far behind other available options. Assisting Microsoft to maintain its monopoly position, as does this proposed Settlement, makes it very, very difficult for citizens, consumers and businesses to take steps to protect their sensitive personal and business data.
4. The proposed Settlement threatens innovation. Innovation in software development is critical to our national interest. Significant innovation in software development comes through the open source, free software and educational communities -- this is how the Internet was born. Similarly, the proposed Settlement harms consumers by discrimination against non-profit software development activities. For example, section III(J)(2) of the proposed Settlement allows Microsoft to withhold information from those who do not meet Microsoft's criteria for the "viability of its business." Section III(D) specifies that Microsoft disclose information regarding APIs to /commercial /interests. This language could be interpreted to allow Microsoft to withhold information from open source and free software groups -- groups which are at the forefront of a great deal of software innovation. And also to withhold information from those software development teams most likely to provide a choice to citizens and consumers. Many activities by non-profit groups provide the foundation for commercial activities as well as enormous benefit to consumers. Any suggestion that these groups could be excluded from whatever protection the proposed Settlement

offers should be eliminated.

5. The specifications for Microsoft APIs and file formats must be public. Providing subsets of this information to subsets of the development community does not provide an effective remedy.

Our national interest and well-being as citizens depends on innovation and choice, particularly in the way we handle digital data. The illegal activities of Microsoft threaten this well-being, and the proposed Settlement is a monumental failure on all fronts. I urge the Court to resist the allure of a speedy answer, and to reject the proposed Settlement.

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